CITY COUNCIL PROCEEDINGS

Tuesday, September 20, 2011 6:00 p.m.

1. CALL TO ORDER AND ROLL CALL

Mayor Osborne called the regular September 20, 2011 City Council meeting to order at 6:00 p.m. in Council Chambers.

Those present were: Mayor Osborne, Deputy Mayor Wilson and Council Members Ageton, Appelbaum, Cowles, Gray, Karakehian and Morzel.

Council Member Becker was absent.

A. COLORADO COMPANIES TO WATCH DECLARATION.

Mayor Osborne read a declaration honoring the Boulder recipients of the Colorado Companies to Watch Awards and declared October 1 through 31 as Colorado Companies To Watch Month.

2. OPEN COMMENT and COUNCIL/STAFF RESPONSE – 6:10 p.m.

- 1. Shannon Burke with the Fairview Net Zero club urged Council to pass a ban or place a fee on single use plastic bags.
- Elizabeth Allen spoke in support of the call-up on the agenda and agreed with the Landmarks Board conditions. She also commented that there wasn't enough affordable housing in Boulder. Perhaps more taxes on pops and scrapes or taxing single occupancy drivers coming into Boulder would help support more affordable housing.
- 3. Earl McGowen, Orchard Grove resident spoke to the mobile home recommendations in the Affordable Housing Task Force recommendations. Please preserve mobile home parks and ask the Task Force to look into resident owned mobile home parks.
- 4. William DeOreo, Chair of WRAB but speaking on his own behalf, suggested a couple changes to the water and ditch rights memo but supported each of the consent items on the agenda.
- 5. David Diamond with the Fairview Net Zero club urged Council to ban all plastic bag use in stores and place a fee on paper bags.
- 6. Louie McKee, North Briar Estates neighbor, spoke in opposition to the Boulder Housing Partners process related to the north Boulder supportive housing project.
- 7. Joshua Brown with the Fairview Net Zero club also urged a ban on plastic bags and a fee on paper bag use in Boulder.
- 8. Karie Koplar with the North Boulder Alliance spoke in opposition to the BHP homeless supportive housing project and raised concern about the zoning.
- 9. Martin Hammer with the North Boulder Alliance also spoke in opposition to the BHP homeless supportive housing project and lack of public input and process.
- 10. Ari Rubin a member of Housing Colorado opposed taxpayer dollars being used to

- fund the program. He thought the affordable housing program favored developers over participants in the program. He raised concern there was no citizen advisory board to oversee the Housing and Human Services department.
- 11. Richard Demuth raised concern about license plate violations in Boulder and also spoke to his recent suspension from the Boulder Library.
- 12. Stephen Keenan raised concern about the city purchasing obsolete poles and wires if proceeding with municipalization.
- 13. Diane Soucheray, President of the Dakota Ridge Master Association, also raised concern about the homeless supportive housing proposed in north Boulder. She urged Council to consider the retail value and potential amenities for that property that could benefit the neighborhood.
- 14. Larry Sutton spoke in support of the supportive housing project in north Boulder and did not think there was an overconcentration of homeless in the area.
- 15. Peter Richards raised concern about a 7-11 going in at 13th & College on University Hill and did not feel it fit into the historic character of the Hill area.
- 16. John Moore pooling time with Paul Ward and Eric Shannon and with North Briar Estates also raised concern about the homeless supportive housing project in north Boulder and the lack of public process and community input.
- 17. Karey Christ-Janer with the Boulder Smart Energy Coalition, supported Boulder's efforts but did not support measures 2B and 2C.
- 18. Sam Alschuler, an Orchard Grove resident, supported the Affordable Housing Task Force recommendations and urged consideration of resident owned mobile home parks.

City Manager Response:

City Manager Brautigam indicated that Boulder Housing Partners would delay submitting any conditional use application until after the first of the year to provide more opportunity for public input.

City Council Response:

Council Member Ageton, Council liaison to Boulder Housing Partners, provided a handout to Council outlining some of the BHP policy around the project and noted a meeting would occur on September 29 about the project.

Deputy Mayor Wilson indicated he would like to see this issue return to Council for further discussion as well as look at the management plan for the Boulder Homeless Shelter.

Council Member Becker raised concern about the concentration of facilities in north Boulder. City Manager Brautigam noted CAC would discuss finding an opportunity for a future Council discussion.

Council Member Appelbaum requested more information about what role Council could play in these types of decisions.

Council Member Morzel commented that the public was caught off guard and were left out of the process. She hoped BHP would be open to the public's feedback.

Council Member Gray asked that staff provide BHP with copies of the testimony and handouts from public comment. She asked Council Member Ageton to discuss with BHP how the public feedback would be incorporated into its proposal.

Council Member Cowles spoke in support of the homeless community and pursuing the matter further.

Council Member Karakehian indicated he wasn't initially clear on the proposed use and was happy with the hold BHP had put on its application. He agreed that he needed to understand what role Council could play in the decision making process.

Council Member Ageton clarified that the project concept was for permanent housing, not transitional housing. Although residents may move on at will, they would be provided with case management while in residence.

Several Council Members requested that staff develop an email list to help notify residents of any Council discussions on the item and any associated materials.

3. **CONSENT AGENDA:** - 7:25 p.m.

A. Introduction, first reading and consideration of a motion to order published by title only an ordinance amending Chapter 9-3 "Overlay Districts" and Section 9-16-1 "Definitions," B.R.C. 1981 to amend floodplain regulations in order to protect critical facilities and mobile populations in the 500- and 100-year floodplains.

This item was pulled from the agenda and will be rescheduled at a later date.

B. Introduction, first reading and consideration of a motion to order published by title only an ordinance repealing and re-enacting Section 11-1-19, "Water and Ditch Rights," B.R.C. 1981, to address agreements for right of first refusal, purchase and sale of water or ditch rights and resulting adjustment of water budget.

Council Member Gray moved, seconded by Wilson to approve Consent agenda item 3B with item 3A removed from the agenda. The motion carried 9:0. 7:25 p.m.

Council Member Gray requested analysis of Bill DeOreo's comments as part of the second reading memo for item 3B.

4. **POTENTIAL CALL- UP CHECK IN:**

ORDER OF BUSINESS

- 5. PUBLIC HEARINGS: 7:26 p.m.
 - A. SECOND READING AND CONSIDERATION OF A MOTION TO ADOPT ORDINANCE NO. 7813 AMENDING TITLE 9, LAND USE CODE, B.R.C. 1981:
 - 1. SECTION 9-7-1 TABLE 7-1 "FORM AND BULK STANDARDS" ADDING A 65-FOOT SUPPLEMENTAL SETBACK FOR ZONE DISTRICTS DOWNTOWN-5 (DT-5) AND PUBLIC (P) ALONG CANYON BLVD. FROM 9TH TO 16TH STREETS.
 - 2. SECTION 9-8-2 TABLE 8-2 "FLOOR AREA RATIO ADDITIONS" ADDING A FLOOR AREA ADDITION FOR COMMERCIAL USES IN THE DT-5 ZONE DISTRICT.

David Driskell introduced the item. He noted that the business community had expressed that there was a lack of quantity and quality of office space in downtown Boulder. Downtown was also the best area served by transit. A vibrant downtown area would require the ability to house large employers. Staff thought this was an appropriate and desired code change to allow for more activity downtown. The proposed FAR change was supported unanimously by the Planning Board and it has suggested the City revisit the change in five years. The setback on Canyon Boulevard was also supported unanimously by Planning Board.

Louise Grauer spoke to the proposed FAR changes which were to change DT-5 to allow a commercial floor area addition in conjunction with a housing linkage fee and to codify the 65-foot setback from the centerline of Canyon Blvd right-of-way from 9th to 16th Streets. She also spoke to the rationale behind the changes including allowing additional flexibility downtown. She described the current and proposed Floor Area Ratio limits and noted you can combine additions in DT-5 in the current proposal. Build-out projections show the changes would result in more office space, more employees and fewer residential units. The economic benefits included increased property tax revenues to the BID and CAGID and downtown employees would spend an average of \$86 per week downtown for total annual sales at build-out of \$5.5 million. The city would consider new and expanded TDM and parking management programs to reduce increased traffic and parking impacts that would be anticipated at build-out. The housing impact fee would provide funding to the affordable housing fund.

Sam Assefa then spoke to the proposed 65-foot setback along Canyon from 9th to 16th Street.

Council Member Morzel asked staff to describe Class A and whether it would be coming into Boulder's code. Mr. Assefa explained that Class A office space was defined as a high end building (finishes and materials) as well as location. Ms. Morzel asked why a previously approved Class A project had not yet been built. David Driskell explained that the Eads/Golden Buff site had been delayed through site review and the economic downturn/finance access had held that project back. She asked what the vacancy rate was currently in Boulder's office space. Mr. Driskell indicated it varied by location but had heard it was pretty consistently full downtown. She asked what the original build-out numbers were. Ms. Grauer commented that she did not have those numbers readily available but that the original build-out had occurred much more quickly than anticipated. Ms. Morzel clarified that the linkage fee had not yet been adjusted for inflation. She wondered, with increasing jobs, where people would live. She also asked how many downtown employees lived in Boulder. Molly Winter indicated this information was collected in a survey and the last results were approximately 63% mode share.

Council Member Gray asked about parking management and indicated she would rather see the city proactively analyze parking reduction programs. She asked whether there was anything in the DT-5 zone to encourage retail other than bank use. Mr. Driskell indicated there was nothing in there now requiring retail but it was certainly encouraged. Regarding the housing linkage fee, she suggested the Tischler study was done in 2008 and perhaps an update would be useful. Susan Richstone reported that the report was used to set all of the City's impact fees and can be adjusted every year based on the CPI. Keeping the linkage fee at \$9.10 would be consistent with other current fees. There currently were no linkage fees connected to commercial space.

Andy Proctor from Housing and Human Services commented that the linkage fee would allow community benefit to be connected to affordable housing and Ms. Richstone's comments were accurate.

Mayor Osborne raised concern about the disparity between a cash in lieu payment and a linkage fee where a reverse incentive may result.

Council Member Karakehian noted there had been substantially more profits for developers in housing than for commercial and he thought this would give developers an alternative.

Council Member Gray commented that other land use issues surrounding the DT-5, including restaurant hours and use, would still need to be addressed.

Council Member Appelbaum asked how a 65 foot setback would impact building along Canyon. Mr. Assefa provided examples of square footage whether building by-right or through a site plan review; the FAR would be reduced and specifics determined through site review. Staff was working with the Boulder Design Advisory Board to determine how to create consistency in the area via design guidelines. Mr. Appelbaum asked how this would fit into the Civic Center Master Plan.

Council Member Ageton raised concern that there was no discussion in the Planning Board minutes about the setback. Staff responded Planning had discussed it previously and there were no questions in the minutes provided. She asked how concepts would be integrated so property owners would know what is possible. Mr. Driskell commented that it was staff's intent to bring all the pieces together into a shared vision through the Connections Plan in the next year. Ms. Ageton expressed that she was struggling with the unpredictability of the various pieces.

Council Member Becker agreed that property owners on the south side of Canyon may be at a disadvantage as the vision didn't come forward first. She thought this might actually discourage property owners from redeveloping.

Council Member Karakehian raised concern that doing this seemed to only preserve the opportunity until a vision could be determined and he wasn't sure this was the right approach. Mr. Driskell commented that Council could revisit any code changes once a vision plan is in place.

The public hearing was opened:

- 1. Elizabeth Allen spoke in support of the 65 foot setback but did not agree with the proposed FAR changes.
- 2. Sean Maher with Downtown Boulder Inc. indicated downtown had a 5-6% vacancy rate, which was low for the state. He indicated two other large tech companies were looking at downtown and the issue was more about keeping jobs in Boulder versus moving down the turnpike. Both boards of Downtown Boulder and the Business Improvement District had voted unanimously to support the FAR changes.
- 3. Rich Majors, owner of the 1580 Canyon site, expressed that he would lose square footage. He suggested a waiver on the rear-yard setback would allow him to develop by-right and urged Council to consider this.
- 4. Adrian Sopher, 1919 14th Street, Architect for Liquor Mart, noted that Liquor Mart could still achieve 2.7 FAR but wouldn't know if that would be true in the end once the connections plan was complete.
- 5. Nolan Rosall, a consultant in this process, expressed that the Downtown Alliance process created a significant FAR downzoning and he was more comfortable with what was being proposed this evening.
- 6. Stephen Keenan expressed that he thought the proposed changes would

take away housing on the top floor.

Council Member Becker moved, seconded by Karakehian to adopt Ordinance No. 7813 section 9-8-2, Table 8-2 "Floor Area Ratio Additions" adding a floor area addition for commercial uses in the DT-5 zone district. The motion carried 9:0; 9:45 p.m.

Council Member Gray moved, seconded by Appelbaum to amend ordinance No. 7813 to include 9-7-1, Table 7-1 "Form and Bulk Standards" adding a 65 foot supplemental setback for zone districts Downtown 5 (DT-5) and Public (P) along Canyon Boulevard from 9th to 16th Streets. The motion carried 5:4; Ageton, Becker, Karakehian and Wilson opposed. 9:40 p.m.

Council Member Morzel moved, seconded by Ageton to suspend the rules and continue the meeting at 10:35 p.m. The motion carried 7:1; Karakehian opposed, Becker absent.

B. SECOND READING AND CONSIDERATION OF A MOTION TO ADOPT ORDINANCE NO. 7814 TO AMEND PROVISIONS OF CHAPTER 6-14 "MEDICAL MARIJUANA," B.R.C. 1981. – 9:45 p.m.

City Attorney Tom Carr provided an introduction to the item providing data on the number of license applications received, issuances, denials and appeals. The proposed changes 1) allowed for the transfer of some medical marijuana licenses under specific circumstances 2) allowed for an administrative review of application decisions prior to the city's decision being final and 3) clarifies various issues previously raised by Council and the public such as code inspections, regulation of transportation, regulation on advertising and allowing multiple types of businesses at one location.

Council Member Ageton asked about license transfers and whether it allowed any flexibility to address other issues that may arise between sections 6-14-3 (e)(1) and 6-14-15.

The public hearing was opened:

- 1. Carl Savitz with Flower of Life spoke to the separate tenant space issue and indicated staff was already enforcing the current ordinance as though the new language was already adopted. He felt their business deserved some sort of protection given that they had tried to comply with all the requirements and built a wall and outside door please add language to this effect.
- 2. Kelly Moore with Flower of Life spoke to the lack of respect the industry was receiving and commented on the undue burden the requirements were having on their business.
- 3. Daniel Williams an attorney representing Southwest Alternative Care spoke to the administrative hearings and urged Council to support the Attorney's recommendations on retroactivity.
- 4. Truman Bradley with Southwest Alternative Care spoke to the limitations on license

- transfers noting this greatly reduced the number of people who could buy one of these businesses in Boulder and would not let market economics take over.
- 5. Diana Caile urged Council to protect the youth in Boulder and restrict advertising to minors.
- 6. Nancy West McGuire spoke regarding restrictions on advertising. The intended impact is to be successful but the unintended impact targets teens. What does this say about the values of our community?
- 7. Diane C Zarkowski, parent and MMJ Dispensary owner expressed disappointment in attitude towards the Boulder dispensaries.
- 8. Jay Czarkowski spoke regarding advertising and challenged the city to produce adds that "lure" minors.
- 9. Gavin Reinhart, owner of the Rooster, defied Council to find any ad in the issue he handed out that targeted youth. He suggested specific disclaimer language on advertising.
- 10. Stephen Keenan spoke to the professional environment of Flower of Life.
- 11. Chris Woods supported regulating advertising and commented there needed to be a regulatory body to enforce the laws.

There being no further speakers the public hearing was closed.

Council Member Morzel asked how free marijuana was allowed (based on the advertisements). Kathy Haddock responded there was currently no prohibition on giving it away for free.

Council Member Cowles clarified with the City Attorney that the separate facilities had different requirements. Kathy Haddock noted that from the state's perspective security cameras were required to help track medical marijuana from seed to sale. Regarding advertising, Mr. Cowles commented that some of the advertisements reminded him of Joe Camel and considered these to still target kids.

Deputy Mayor Wilson commented the City was doing the best it could under tough circumstances. He agreed that many of the ads clearly targeted young people and suggested the industry needed to take some responsibility for cleaning up the advertising. Kathy Haddock noted criminal complaints and/or discussion at the time of renewal hearing were two possible actions the city could take against those who advertised targeting minors.

Council Member Appelbaum clarified that the Attorney's office had enough flexibility to work within the suggested license transfer regulations. Ms. Haddock clarified that someone could apply for a medical marijuana license prior to the review process for transfer so that both parties were invested in the transfer.

Council Member Gray clarified that Mr. Williams' issue was addressed in the revised language.

Council Member Osborne moved, seconded by Appelbaum to adopt Ordinance No. 7814 to amend provisions of Chapter 6-14 "Medical Marijuana," B.R.C. 1981. The motion carried

8:0; Becker absent. 11:00 p.m.

Council Member Ageton moved, seconded by Wilson to suspend the rules and continue the meeting at 11:00 p.m. The motion carried 7:1; Karakehian opposed, Becker absent.

6. MATTERS FROM THE CITY MANAGER:

A. MOTION TO RECEIVE THE 2010-2012 AFFORDABLE HOUSING TASK FORCE REPORT. – 11:05 p.m.

Karen Rahn provided an introduction to the item. She thanked the Task Force members for their contribution to the report.

Mayor Osborne presented Certificates of Appreciation to the Task Force Members.

Karen Rahn then presented the report noting staff was currently in Phase III of the affordable housing review (a look at new affordable housing initiatives). The current goal for the program was 10% and was related to build out in the year 2000. Currently, Boulder needed 1,510 additional units to meet the current goal. Housing was considered affordable when a household paid no more than 30% of their annual income on housing.

Andy Proctor indicated the Task Force Members went through an extensive education process to familiarize themselves with various factors impacting affordable housing in the community. They had discussed regionalism and commuting patterns, senior housing, a long-term master plan and analysis of household income groups. The Task Force then adopted its guiding principles and landed on eight different topic areas that its recommendations should fall into including goals and resource allocation, funding, inclusionary housing and homeownership, land use tools and development review, home owner association fees, mobile homes, housing for seniors and housing for students. Outcomes included guiding principles, recommendations and ideas for further consideration.

Gary Horton, Affordable Housing Task Force Member, presented the Goals and Resource Allocation recommendations which included delegating income priority decisions for funding to the City to maximize opportunities, balancing ownership and rental units and affirming the goal for 10% of total housing stock at any given time to be permanently affordable, and to periodically review progress toward goals. The Task Force recommended unanimously that the City not achieve the goal by expanding the current (2011) Area II Boundary. Regarding funding, the Task Force recommended providing additional funding sources and exploring the following funding options (presented without prioritization): Occupation/Head Tax, Hotel/Accommodations Tax, Sales Tax or Property Tax. Utilizing each funding source to raise \$1 million from each option for affordable housing would help spread the costs out throughout the community. Other ideas included a housing excise tax/linkage fees, commercial/business license fee, tax increment financing, transfer of development rights from open space, real estate documentary fee (however this would require pursuing changes to legalize real estate transfer taxes in Colorado).

Brian Lewandowski from the University of Colorado presented the Inclusionary Housing recommendations to further analyze the cost of providing affordable ownership vs. rental

housing, further consideration of tradeoffs when implementing IH and allocating funding, and allowing opportunistic resource allocation. Other ideas were to 1) continue to use IH to provide ownership homes (up to 80% AMI), 2) Institute IH requirement of 10% for apartment to market rate condo conversions, 3) lower IH from 20% to 10% of units if replacement funding is secured & allocated, 4) Incent cash-in-lieu payments over units by reducing fee, to ultimately produce more funds and 5) reduce IH from 20% in return for the provision of other substantive community benefit. Regarding Homeownership, the Task Force suggested securing a new revenue source for new ownership units, freezing the current homeownership program and redirecting resources for lower income units, or adding a shared appreciation pilot program. The Task Force also suggested analyzing costs and long-term implications of permanent affordability for homeownership or supporting the homeownership program in its current incarnation with no changes.

Bill Holicky with the Planning Board then spoke to land use tools and development review noting that there was an idea to support, in concept, the Community Benefit Comprehensive Plan Policy as written by Boulder Housing Partners. Other ideas were to expand the number of OAUs and ADUs, consider changing occupancy limits, encourage or incent more, small, detached units, and allow subdivision of single family lots for one additional deed/price-restricted smaller unit. None of the ideas alone would solve Boulder's affordable housing needs but could incrementally help. Some other ideas the Task Force looked at were zoning for higher density along transit corridors to require affordable smaller units, incent smaller, detached units, preserve affordability of existing market rate units and require affordable housing benefit for conversions of apartments to condos.

Regarding Homeowner Association Fees, the recommendations included providing one-time city-funded cash grants for capital reserves, offer low or no interest city funded loans to cover association related fees, Cap HOA fees for affordable units in mixed affordable/market rate projects, or developing in-depth HOA governance training program for affordable buyers. Other ideas included requiring city approval of initial HOA fee rates or index of maximum increase rates, provide owners of affordable units access to fewer amenities, require developers "endow" affordable unit reserves in mixed affordable market rate projects, or have a city representative serve on initial, developer-appointed board to represent ownership position.

The Task Force's recommendations included developing a mobile home park strategy with analysis of the following for mobile home park ownership: Fee simple, land trust model, limited equity housing cooperative (LEHC), micro-zoning, and right of first refusal for residents to buy a mobile home community if offered for sale. The Task Force recommended identifying additional tools and strategies for mobile homes/communities to be included in programs to preserve affordability and exploring eligibility of mobile homes/communities for federal and other funding sources.

Senior housing recommendations included convening a group to develop a strategy for meeting needs, commissioning a needs-assessment, tracking senior affordable housing separately, tracking rent and services separately to differentiate between affordable rents and total senior-tenant monthly payments. Additionally, consider whether annexation policies should include senior housing as a community benefit and consider how needs can be met through current task force recommendations.

Andy Proctor noted student housing was also discussed and the recommendation was to work with CU to better understand the long-term enrollment projections and impacts on faculty and staff and that the City should not directly provide housing to traditional students. Some students are more non-traditional. He indicated staff would return with additional information at Council's direction.

Council agreed that further discussion was desired and the item was continued to a study session at 6 p.m. on Tuesday, September 27, 2011. Further, Council asked staff to provide a spreadsheet so that Council Members could provide comments in writing back to staff prior to the study session. Mayor Osborne reminded Council that another opportunity for discussion would be at the Council Retreat when priorities are determined.

7. MATTERS FROM THE CITY ATTORNEY:

None.

8. MATTERS FROM MAYOR AND MEMBERS OF COUNCIL:

A. POTENTIAL CALL-UPS:

7. CONCEPTUAL LANDMARK ALTERATION CERTIFICATE FOR THE GENERAL LOCATION, MASS, SCALE, AND HEIGHT OF THE PROPOSED NEW BUILDING ON 1048 PEARL STREET AND 1023 WALNUT AVENUE IN THE DOWNTOWN HISTORIC DISTRICT (DAILY CAMERA BUILDING), PER SECTION 9-11-8 OF THE BOULDER REVISED CODE (HIS2011-00139) INFORMATION PACKET DATE: SEPTEMBER 14, 2011. LAST OPPORTUNITY FOR CALL-UP IS SEPTEMBER 20, 2011. CONDITIONALLY APPROVED BY THE LANDMARKS BOARD 5-0.

No action was taken on this item.

B. 2011 MID-YEAR APPOINTMENTS TO BOARDS AND COMMISSIONS.

Council appointed Jeff Dawson to the Boulder Junction Access District – Parking Commission by acclamation.

Council appointed Sue Dean to the Downtown Management Commission by acclamation.

Council Member Wilson moved, seconded by Morzel to ratify the appointments to Boards and Commissions.

OTHER MATTERS:

Council Appointment to the Retreat Committee:

Council Members Appelbaum and Ageton volunteered to be on the Council Retreat Committee.

9. **PUBLIC COMMENT ON MATTERS:**

None.

10. **FINAL DECISIONS ON MATTERS:** Action on motions made under Matters.

<u>Vote was taken on the motion to ratify the appointments to Boards and Commissions. The motion carried 8:0, Becker Absent. 11:55 p.m.</u>

11. ADJOURNMENT

There being no further business to come before Council at this time, BY MOTION REGULARLY ADOPTED, THE MEETING WAS ADJOURNED AT 11:58 P.M.

APPROVED BY:

Susan Osborne,

Mayor

ATTEST:

Alisa D. Lewis,

City Clerk